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IN THE

Supreme Court of the United States

OCTOBER TERM 1939.

No. 329.

HENRY RUSSELL, LAWRENCE MILLER, CHARLES STEERS and JOHN P. WING, co-partners doing business under the firm name of RUSSELL, MILLER & CAREY, and SAMUEL A. PLEASANTS,

Petitioners,

against

JAMES S. TODD, JOSEPH R. WORK and WILLARD C. WEISS, co-partners doing business under the firm name of J. S. TODD & CO., on behalf of themselves and all other creditors of THE OHIO JOINT STOCK LAND BANK OF CINCINNATI, OHIO,

Respondents,

and

HOWARD Y. LISSENDEN, HENRY TRUXTON EMERSON, WILLARD C. WEISS and ALEX LOWENTHAL, as Members of The Ohio Joint Stock Land Bank of Cincinnati, Ohio, Creditors' Protective Committee,

Intervenors-Respondents.

MEMORANDUM IN OPPOSITION TO PETITION FOR REHEARING.

GEORGE A. SPIEGELBERG,
Counsel for Respondents and Intervenors-Respondents.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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MEMORANDUM IN OPPOSITION TO PETITION FOR REHEARING.

Statement.

This Court heretofore and on February 26th, 1940, rendered an opinion herein in favor of the respondents and intervenors-respondents (reported in 84 L. Ed. Adv. Op.

517). On the 21st day of March, 1940, the petitioners applied for a rehearing together with an interim stay of mandate, or, alternatively, for extension of time within which to apply for rehearing and for stay of mandate. The Court granted the alternative prayer for relief and stayed its mandate, first until the 15th day of May, 1940, and subsequently until the 29th day of May, 1940.

As the petitioners based their application on the fact that there was pending undetermined in the Court of Appeals of the State of New York a case entitled *Mencher* v. *Richards*, we assume that the Court which granted a stay of its mandate was influenced by the pendency of the Mencher case in the New York Court of Appeals.

The Petition for Rehearing Should be Denied and the Stay of Mandate Vacated.

We respectfully refer this Court to our prior memorandum in opposition to petition for rehearing dated March 21st, 1940. Therein we said:

> "It is incomprehensible that any possible decision by the Court of Appeals in the pending appeal in the Mencher case can affect the decision of this Court in *Russell, et al.* v. *Todd, et al.* That this is so a brief examination of the possible decisions will convincingly demonstrate.
>
> "The question before the Court in the Mencher case is the propriety of the action of the Appellate Division in denying as a matter of law an examination before trial as to causes of action expressly held by the Appellate Division to be remediable at law on the ground that the statute of limitations, as a matter of law, barred the relief and, therefore, barred an examination of the defendants. *If the Court of Ap-*

peals, in view of the fact that the defendants are a moneyed corporation and its officers and directors, decides that the legal statutes of limitations contained in Civil Practice Act Section 49, Subdivision 4, is applicable, it may reverse on the ground that that statute does not begin to run until the plaintiff has discovered the facts giving rise to his cause of action, and that a trial is necessary to determine whether the statute has run.

"If the Court of Appeals believes that the six year legal statute of limitations contained in Civil Practice Act Section 48, Subdivision 3, is the relevant statute, it will affirm, since that statute runs irrespective of the plaintiff's knowledge.

"If the Court of Appeals believes that the paragraphs of the complaint concerning which an examination is sought set forth a cause of action adequately remediable only in equity, they will reverse and extend the application of the doctrine set forth in Mencher *v.* Richards reported in 256 App. Div. 280 to the entire complaint rather than to a part of the complaint as was done by the lower Court. These are the only possible decisions which the Court can render in view of the questions raised by the appeal before them." (Italics ours.)

We direct the Court's attention to the italicized portion in the foregoing quotation. This is the course which the Court of Appeals adopted.

Hereto annexed and made a part hereof and marked Exhibit "A" is the full opinion unofficially reported rendered by the Court of Appeals in the Mencher case. For emphasis, we take the liberty of quoting the following:

"In *Potter* v. *Walker* (276 N. Y. 15) we had before us a stockholder's derivative action against

directors of a corporation (which was not a moneyed corporation) and we there held in applying the Statute of Limitations that the action was to be treated in the same way as though the corporation were the plaintiff, and, that if the action was to recover profits which the director had wrongfully received and for which he would be liable to account, it was equitable in nature and subject to the ten-year statute, but, if the action was for damages suffered by the corporation from the negligent action of the director where there had been no participation by him in the receipt of wrongful profits, the six-year statute (as it then was) applied. Here the causes of action are of the latter class and the ten-year statute is not applicable. The six-year statute is applicable under the authority of the *Potter* case (*supra*) unless the fact that the corporation involved is a moneyed corporation requires a different ruling because of the quoted language of subdivision 4 of section 49. We need not inquire as to the reason for this statutory distinction between cases involving directors of moneyed corporations and those involving directors of other corporations. The statute is unambiguous and definite. The causes of action here, as to which examinations are sought and have been denied, are the very causes of action which subdivision 4 of section 49 specifies. It seems clear that that provision is here applicable."

It will be noted from the foregoing quotation that in discussing *Potter* v. *Walker*, on which this Court relied in its decision in *Russell* v. *Todd*, the Court of Appeals stated that the ten-year statute was applicable where the cause of action "was equitable in nature" but that "if the action was for damages suffered by the corporation from the negligent action of the director * * * the six-year statute

(as it then was) applied. Here the causes of action are of the latter class," (that is, of the class to which the statute of limitations applicable to legal causes of action apply) "and the ten-year statute is not applicable".

The Court of Appeals, having definitely decided that the cause of action before them was a legal cause of action, then discusses whether the six-year statute applicable to ordinary corporations or the three-year statute applicable to moneyed corporations is applicable and decides the latter was applicable to the legal causes of action under discussion.

The only conclusion that can be drawn is the conclusion forecast by us in our memorandum dated March 21st, 1940, in opposition to the petitioners' original petition for rehearing and hereinabove quoted. In short, the Court of Appeals, having explicitly decided that the cause of action was not "equitable in nature and subject to the ten-year statute", then decided that as between the two statutes applicable to a legal cause of action, the three-year statute, Civil Practice Act, Section 49, Subdivision 4, rather than the six-year statute, Civil Practice Act, Section 48, Subdivision 3, applied. This decision leaves the law of the State with respect to equitable causes of action, as in the case at bar, exactly as it was prior to the decision. It leaves the decisions of the Court of Appeals in *Hanover Fire Insurance Co.* v. *Morse Dry Dock & Repair Co.*, 270 N. Y. 86, and *Potter* v. *Walker*, 276 N. Y. 15, with the same authority as before the decision in the Mencher case.

As this Court held that the cause of action in the case at bar is exclusively cognizable in equity, and the relevant New York authorities relied upon by this Court require the ten-year statute to be applied to such causes of action,

it must necessarily follow that the Mencher case, which the Court of Appeals specifically states does not deal with equitable causes of action, cannot affect the result in the case at bar.

Conclusion.

The petition for rehearing should be denied and the stay of mandate should not be renewed.

GEORGE A. SPIEGELBERG,
Counsel for Respondents and
Intervenors-Respondents.

Dated: May 29th, 1940.

Exhibit A.

MAX MENCHER, as a Stockholder of the Empire Title & Guarantee Company, Suing on Behalf of Himself and All Others Similarly Situated, Appellant, *v.* EDWARD A. RICHARDS, *et al.*, Respondents, and ADAM CHRISTMANN *et al.*, Defendants.

(Decided May 28, 1940.)

APPEAL, by permission, from so much of an order of the Appellate Division of the Supreme Court in the second judicial department, entered December 26, 1939, as affirms an order of Special Term (1) denying a motion by plaintiff for an order directing the defendants Edward A. Richards *et al.*, to appear and be examined before trial as adverse parties with respect to specified items set forth in plaintiff's notice of motion for such examination, and (2) denying plaintiff's motion for a similar order directing the defendant Empire Title & Guarantee Company to appear and be examined before trial as an adverse party with respect to other specified items as set forth in plaintiff's notice of motion for such examination.

The following question was certified: "Was an examination before trial of the defendant Empire Title & Guarantee Company, a moneyed corporation, as to items 9, 10, 11, 12, 13, 18, 19, 20, 21 and 22, and of the individual defendants Richards, Paulson and Ohlau, directors of a moneyed corporation, as to items 2, 3, 4, 5, 6, 11, 12, 13, 14 and 15, set forth in plaintiff's notice of motion, properly denied as a matter of law?"

Donald I. Peyser for appellant.

John P. McGrath for Edward A. Richards, Paul Paulson and Charles H. Ohlau, respondents.

Bruce R. Duncan for Empire Title & Guarantee Company, respondent.

SEARS, J. The part of the order which is before us for review denies an examination before trial of the defendant Empire Title & Guarantee Company and certain individual defendants, directors of the Empire Title & Guarantee Company. The result of the appeal depends upon the particular section of the Statute of Limitations applicable to the plaintiff's alleged causes of action to which the examinations relate. The action is a stockholder's derivative action to recover on behalf of the corporate defendant from the individual defendants for losses resulting from illegal investment by the individual defendants of the funds of the corporate defendant. The corporate defendant is concededly a moneyed corporation. The acts which constitute the alleged causes of action occurred in 1929 and 1930 in respect to which the examinations are sought and are not alleged to have resulted in profit for the individual defendants. This action was begun March 3, 1937. The pertinent parts of the three sections of the statute here involved are:

> "Section 48 (as it was before amendment, L. 1936, Ch. 558). Actions to be commenced within six years. The following actions must be commenced within six years after the cause of action has accrued:
>
> "1. • • •
>
> "2. • • •
>
> "3. An action to recover damages for an injury to property, or a personal injury except in a case where a different period is expressly prescribed in this article."
>
> "Section 49. Actions to be commenced within three years. The following actions must be commenced within three years after the cause of action has accrued:

"1. * * *

"2. * * *

"3. * * *

"4. An action against a director or stockholder of a moneyed corporation, or banking association, to recover a penalty or forfeiture imposed, or to enforce a liability created by the common law or by statute. The cause of action is not deemed to have accrued until the discovery by the plaintiff of the facts under which the penalty or forfeiture attached or the liability was created."

"Section 53. Limitation where none specially prescribed. An action, the limitation of which is not specifically prescribed in this article, must be commenced within ten years after the cause of action accrues." (Civ. Prac. Act.)

In *Potter* v. *Walker* (276 N. Y. 15) we had before us a stockholder's derivative action against directors of a corporation (which was not a moneyed corporation) and we there held in applying the Statute of Limitations that the action was to be treated in the same way as though the corporation were the plaintiff, and, that if the action was to recover profits which the director had wrongfully received and for which he would be liable to account, it was equitable in nature and subject to the ten-year statute, but, if the action was for damages suffered by the corporation from the negligent action of the director where there had been no participation by him in the receipt of wrongful profits, the six-year statute (as it then was) applied. Here the causes of action are of the latter class and the ten-year statute is not applicable. The six-year statute is applicable under the authority of the *Potter* case (*supra*) unless the fact that the corporation involved is a moneyed corporation requires a different ruling because of the

quoted language of subdivision 4 of section 49. We need not inquire as to the reason for this statutory distinction between cases involving directors of moneyed corporations and those involving directors of other corporations. The statute is unambiguous and definite. The causes of action here, as to which examinations are sought and have been denied, are the very causes of action which subdivision 4 of section 49 specifies. It seems clear that that provision is here applicable.

The respondents urge, however, that even though subdivision 4 of section 49 is applicable, subdivision 1 of section 48 (the six-year statute) is also applicable and that the two provisions must be construed together so that in any event, even though the facts under which the liability was created were not discovered, the Statute of Limitations would have run at the expiration of six years. We do not so read the statutes. Some force must be given the words in the six-year statute, section 48, "*except in a case where a different period is expressly prescribed in this article.*" While the action here is to be looked at as one for an injury to property, a different period is expressly prescribed in subdivision 4, of section 49. Further, neither in section 49 nor in section 53, the two sections providing that the statute runs only from discovery of the facts, is there any limitation upon the time of the discovery, nor is it easily understood why there should be. In 1936 (L. 1936, ch. 558) the six-year period of limitation contained in section 48, was reduced to a three-year period. (See Section 49, Sub. 7, as now in effect.) If section 48 after the amendment continued to limit subdivision 4 of section 49 it would manifestly make the provisions of subdivision 4 of section 49 nugatory and a general three-year limitation would prevail irrespective of the time of discovery.

For these reasons we conclude that subdivision 4 of section 49 is the only Statute of Limitation here applicable, and, as it does not appear what was the date of the discov-

ery of the facts under which the liability was created, the examination should not have been denied as matter of law.

The order, so far as appealed from, should be reversed, with costs, and the certified question answered in the negative.

LOUGHRAN, FINCH, RIPPEY and LEWIS, JJ., concurred; LEHMAN, Ch. J., and CONWAY, J., taking no part.

Order reversed, etc.

SUPREME COURT OF THE UNITED STATES.

No. 329.—October Term, 1939.

Henry Russell, Lawrence Miller, Charles Steers and John P. Wing, Co-partners, etc., Petitioners,
vs.
James S. Todd, Joseph R. Work and Willard C. Weiss, Co-partners, etc.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[February 26, 1940.]

Mr. Justice Stone delivered the opinion of the Court.

The question decisive of this case is whether, in a suit brought in the federal district court in New York to enforce the statutory liability of shareholders of a joint stock land bank for its debts, the court rightly declined to apply the three-year state statute of limitations.

Respondents Todd, Work and Weiss, copartners, in behalf of themselves and other creditors of the insolvent Ohio Joint Stock Land Bank of Cincinnati, Ohio, brought suit in the District Court for Southern New York against petitioners, copartners, to enforce their liability as record shareholders of the bank under § 16 of the Federal Farm Loan Act, 39 Stat. 374, 12 U. S. C. § 812. Petitioners, among other defenses, pleaded the New York three-year statute of limitations. § 49(4) N. Y. Civil Practice Act. The district court found, as is conceded here, that the cause of action accrued April 6, 1928; that plaintiffs in the suit had notice of its accrual on April 15, 1928, and that the suit was commenced three years and eight months later, on December 16, 1931. It overruled the plea of limitations and gave judgment for respondents. 1 F. Supp. 788, 20 F. Supp. 930, 936. The Court of Appeals for the Second Circuit affirmed, 104 F. (2d) 169.

Both courts, holding that the suit was exclusively within the equity jurisdiction of the court, ruled that the doctrine of laches and not the state statute of limitations was applicable, and held that respondents had not been guilty of laches. We granted certiorari October 16, 1939, limited to the question of the application of the New York statute, upon a petition which challenged the decision below as in conflict with the decisions of this Court applying the three-

year statute of limitations in a suit to enforce the liability of stockholders of a state bank in *Platt* v. *Wilmot*, 193 U. S. 602; cf. as to liability of stockholders of national banks, *McDonald* v. *Thompson*, 184 U. S. 71; *McClaine* v. *Rankin*, 197 U. S. 154.

Section 16 of the Federal Farm Loan Act provides that the shareholders of every joint stock land bank "shall be held individually responsible, equally and ratably, and not one for another, for all . . . debts . . . of such bank to the extent of the amount of stock owned by them at the par value thereof. . . . ." Unlike the comparable provision of the National Bank Act, R. S. §§ 5151, 5234, 12 U. S. C. §§ 63, 192, which authorize the receiver of a national bank to enforce the liability of stockholders of an insolvent national bank assessed against them by the comptroller of the currency, this section of the Federal Farm Loan Act confers no power on the receiver of a farm loan bank to levy an assessment on the stockholders of an insolvent bank or to maintain a suit to enforce their liability. *Wheeler* v. *Greene*, 280 U. S. 49; *Christopher* v. *Brusselback*, 302 U. S. 500, 502; *Brusselback* v. *Cago Corporation*, 85 F. (2d) 20.

As the liability of the stockholders as prescribed by this section is to pay "equally and ratably", the sole remedy is by plenary representative suit brought in equity in behalf of all creditors of the bank, in which the existence and extent of insolvency, and the ratable shares of the contribution by shareholders can be ascertained and an equitable distribution made of the fund recovered. But this amount cannot be determined and its distribution effected without resort to the procedures traditionally employed by equity upon a bill for an accounting and for the distribution of a fund brought into its custody. No stockholder is liable for more than his proportion of the debts not exceeding the par value of his stock. His proportion can be ascertained only upon an accounting of the debts and of the stock and a pro rata distribution of the liability among the shareholders and of the proceeds of recovery among the creditors. Such a suit during its progress and at its conclusion by a final decree of distribution requires the exercise of powers which are peculiarly those of a court of equity to bring before it in a single suit all the necessary parties to ascertain their rights and liabilities, and to adjust and settle them by its decrees. *Pollard* v. *Bailey*, 20 Wall. 520; *Terry* v. *Little*, 101 U. S. 216; *Richmond* v. *Irons*, 121 U. S. 27; *Christopher* v. *Brusselback*, *supra*.

When the receiver or officer performing like functions is authorized by statute to assess the shareholders, the assessment is bind-

ing on them by reason of their membership in the corporation, and each shareholder then becomes liable in a suit at law for the amount of the assessment. See *Christopher* v. *Brusselback, supra*, 503, and cases cited. It is for this reason that there is a divergence between the procedure for recovering assessments of shareholders of national banks, and that for enforcing the liability of shareholders in a federal land bank. In the latter case there is no legal remedy, the relief being afforded exclusively in equity. The test of the inadequacy of the legal remedy prerequisite to resort to a federal court of equity is the legal remedy which federal rather than state courts afford. *Di Giovanni* v. *Camden Fire Insurance Ass'n*, 296 U. S. 64; *Atlas Life Insurance Co.* v. *Southern, Inc.*, 306 U. S. 563. And the jurisdiction of federal courts of equity, as determined by that test, is neither enlarged nor diminished by the names given to remedies or the distinction made between them by state practice. *Stratton* v. *St. Louis S. W. Ry.* 284 U. S. 530, 534.

The present suit is not any the less in equity because it turns out that the liability of the shareholders equals the full par-value of their stock. The amount of the liability could not be determined and assessed without an accounting of assets and liabilities, and distribution could not be effected among creditors without resort to the power traditionally that of a court of equity to make its determination of the rights of the parties effective through its decrees *in personam*. Here the decree directs payment into court of the amount found to be due, for distribution among the creditors in conformity to the further order of the court.

The suit being in equity, brought in a federal district court, the question decisive of this case is what lapse of time will bar recovery in the absence of an applicable federal statute of limitations. The Rules of Decision Act does not apply to suits in equity. Section 34 of the Judiciary Act of 1789, 28 U. S. C. 725, directing that the "laws of the several states" "shall be regarded as rules of decision" in the courts of the United States, applies only to the rules of decision in "trials at common law" in such courts, but applies as well to rules established by judicial decision in the states as those established by statute. *Erie R. R.* v. *Tompkins*, 304 U. S. 64.

From the beginning equity, in the absence of any statute of limitations, made applicable to equity suits, has provided its own rule of limitations through the doctrine of laches, the principle that equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant. *Wagner*

v. *Baird*, 7 How. 234, 258; *Stearns* v. *Page*, 7 How. 819, 828, 829; *Philippi* v. *Philippe*, 115 U. S. 151, 157; *United States* v. *Beebe*, 127 U. S. 338; *Curtner* v. *United States*, 149 U. S. 662, 676; *Alsop* v. *Riker*, 155 U. S. 448, 460; *Abraham* v. *Ordway*, 158 U. S. 416, 420. In the application of the doctrine of laches it recognised that prejudice may arise from delay alone, so prolonged that in the normal course of events evidence is lost or obscured, and the English Court of Chancery early adopted the rule, followed in the federal courts, that suits to assert equitable interests in real estate will, without more, be barred after the lapse of twenty years when ejectment or the right of entry for the assertion of a comparable legal interest in the land would be barred. *Elmendorf* v. *Taylor*, 10 Wheat. 152, 173; *Hovenden* v. *Lord Annesly*, 2 Sch. & Lef. 607. And where resort was had to equity in aid of a legal right, equity, following the law, would refuse its aid if the legal right had been barred by the applicable statute of limitations. *Carrol* v. *Green*, 92 U. S. 509; *Godden* v. *Kimmell*, 99 U. S. 201, 210; *Wood* v. *Carpenter*, 101 U. S. 135; *Philippi* v. *Philippe*, *supra*; *McDonald* v. *Thompson*, *supra*; Pomeroy, Equity Jurisprudence (4th ed.), § 1441 and cases cited.

In federal courts of equity the doctrine of laches was early supplemented by the rule that when the question is of lapse of time barring relief in equity, such courts, even though not regarding themselves as bound by state statutes of limitations, will nevertheless, when consonant with equitable principles, adopt and apply as their own, the local statute of limitations applicable to the equitable causes of action in the judicial district in which the case is heard. *Bacon* v. *Howard*, 20 How. 22, 26; *Clarke* v. *Boorman's Executors*, 18 Wall. 493, 505, 506; *Boone County* v. *Burlington, etc. R. R. Co.*, 139 U. S. 684, 692; *Pearsall* v. *Smith*, 149 U. S. 231, 233, 237; *Benedict* v. *City of New York*, 250 U. S. 321.[1]

Even though there is no state statute applicable to similar equitable demands, when the jurisdiction of the federal court is concurrent with that of law, or the suit is brought in aid of a legal right, equity will withhold its remedy if the legal right is barred by the local statute of limitations. It thus stays its hand in aid of a legal right which, under the Rules of Decision Act, would be unenforcible in the federal courts of law as well as in the state courts. *Wil-*

[1] But federal courts of equity have not always held themselves bound to follow local statutes which, in ordinary circumstances it could adopt and apply by analogy. In each case the refusal has been placed upon the ground of special equitable doctrines, making it inequitable to apply the statute. Laches may bar equitable remedy before the local statute has run. Alsop v. Riker,

son v. *Koontz*, 7 Cranch. 202, 205-6; *Michoud* v. *Girod*, 4 How. 503, 561; *Stearns* v. *Page*, 7 How. 819; *Clarke* v. *Boorman's Executors*, *supra*, 505; *Carrol* v. *Green*, *supra*; *Godfrey* v. *Terry*, 97 U. S. 171, 176, 180; *Baker* v. *Cummings*, 169 U. S. 189; *Metropolitan National Bank* v. *St. Louis Dispatch Co.*, 149 U. S. 436; *McDonald* v. *Thompson*, *supra*; *Hughes* v. *Reed*, 46 F. (2d) 435; cf. *Wagner* v. *Baird*, 7 How. 234; *Godden* v. *Kimmell*, *supra*; *Wood* v. *Carpenter*, *supra*.

But where the equity jurisdiction is exclusive and is not exercised in aid or support of a legal right, state statutes of limitations barring actions at law are inapplicable, and in the absence of any state statute barring the equitable remedy in like cases, the federal court is remitted to and applies the doctrine of laches as controlling. *Wagner* v. *Baird*, *supra*, 258; *Badger* v. *Badger*, 2 Wall. 87, 94-5; *Kirby* v. *Lake Shore & Michigan Southern R. R. Co.*, 120 U. S. 130, 139; *Metropolitan Bank* v. *St. Louis Dispatch Co.*, *supra*, 448; *Speidel* v. *Henrici*, 120 U. S. 377, 386, 387; see *Southern Pacific Co.* v. *Bogert*, 250 U. S. 483, where no statute of limitations was pleaded. 244 Fed. 61, 65.

The question remains whether the court below correctly held that the doctrine of laches and not the local three-year statute of limitations is controlling. The present suit being, as we have seen and as the court below held, exclusively of equitable cognizance, in that it is not predicated upon any legal cause of action, the statute is not one which a federal court of equity will adopt and apply as a substitute for or a supplement to its own doctrine of laches, unless it is applied to like causes of action in the state courts.

The present suit was brought in less than four years after the cause of action had accrued, and it is conceded that the cause of action is not barred unless by the three-year statute. Section 49 of the Civil Practice Act provides that "the following actions must be commenced within three years after the cause of action has accrued:

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155 U. S. 448, 460, 461; Abraham v. Ordway, 158 U. S. 416; Patterson v. Hewitt, 195 U. S. 309, 318, *et seq.*; Badger v. Badger, 2 Clifford 137, 154; Lemoine v. Dunklin County, 51 Fed. 487, 492; Kelley v. Boettcher, 85 Fed. 55, 62; Pooler v. Hyne, 213 Fed. 154, 159. On the other hand, time has been held to be no bar to an equitable suit for a trustee's accounting. Michoud v. Girod, 4 How. 503, 561; cf. Badger v. Badger, 2 Wall. 87, 92; Southern Pacific v. Bogert, 250 U. S. 483. Federal courts of equity have not considered themselves obligated to apply local statutes of limitations when they conflict with equitable principles, as where they apply, irrespective of the plaintiff's knowledge of his rights because of the fraud or inequitable conduct of the defendant. Michoud v. Girod, *supra*, 561; Meader v. Norton, 11 Wall. 442; Bailey v. Glover, 21 Wall. 342, 348; Kirby v. Lake Shore & Michigan Southern R. R. Co., 120 U. S. 130; Rugan et al. v. Sabin et al., 53 Fed. 415, 420; Stevens v. Grand Central Mining Co., 133 Fed. 28; Johnson v. White, 39 F. (2d) 793.

. . . (4) An action against a director or stockholder of a moneyed corporation or banking association . . . to enforce a liability created by the common law or by statute. The cause of action is not deemed to have accrued until the discovery by the plaintiff of the facts under which . . . the liability was created." This Court has recognized that this statute is a bar to actions at law and has so applied it in suits to recover assessments on shareholders of a bank. See *Platt* v. *Wilmot*, *supra*.

Respondents, admitting that the statute is a bar to suits at law, argue that it is inapplicable to suits in equity and that when the remedy at law is so inadequate that resort must be had to remedies which are traditionally equitable, the limitation is not that of the three-year but of the ten-year statute, which is made applicable to all actions for which no limitation is otherwise specially prescribed. § 53, N. Y. Civil Practice Act.

At the outset we are confronted with those cases in which this Court in *McDonald* v. *Thompson*, *supra*, and the state courts[3] have recognized and applied the statutory bar to an action at law to equity suits brought in aid of the legal right to recover an assessment upon stockholders. But as we have seen, those cases are referable to the doctrine accepted and applied in the federal courts of equity that equity does not give relief predicated on a legal right which the statute has barred.

Here the jurisdiction being exclusively in equity to enforce rights cognizable only in equity, statutes barring legal causes of action, as we have seen, are not controlling and we turn to the argument of petitioners that the three-year statute is a bar as well to such suits brought in the state courts, even though they are suits in which it is necessary to resort to remedies which are exclusively or traditionally equitable.

The precise question thus raised appears not to have been decided by the New York Court of Appeals. In *Mencher* v. *Richards*, 256 A. D. 280, which was a stockholders' suit brought against directors of a moneyed corporation for an accounting for profits gained through their malfeasance in office, the Appellate Division of the

[3] Schram v. Cotton, 281 N. Y. 499; Nettles v. Childs, 281 N. Y. Memo. Op. 60, 255 A. D. 849; Wright v. Russell, 245 A. D. 703, 155 Misc. 877; leave to appeal denied, 259 N. Y. 683; Beisman v. Hall, 257 A. D. 892; *a fortiori* suits at law in the federal courts to recover assessments upon stockholders of banks are barred by the three-year statute. Platt v. Wilmot, 193 U. S. 602; Hobbs v. National Bank of Commerce, 96 Fed. 396; Seattle National Bank v. Pratt, 103 Fed. 62; Platt v. Hungerford, 116 Fed. 771; Whitman v. Atkinson, 130 Fed. 759; Ramsden v. Gately, 142 Fed. 912.

upreme Court held that the three-year statute did not apply. It ointed out that the statute relates only to causes of action for which money judgment will suffice and not to suits which, although pecifically within the language of the statute, require resort to the quitable remedy for an accounting, and that as to them the ten-ear statute applies. In so construing the statute, it followed the ulings of the Court of Appeals that under the New York statutory cheme of limitations, suits in equity brought against corporate di-ectors for an accounting for want of an adequate legal remedy re governed by the ten-year statute of limitations and not statutes xing a shorter period of limitations which would be applicable if he suit were at law. *Hanover Fire Insurance Co.* v. *Morse Dry Dock & Repair Co.*, 270 N. Y. 86; *Potter* v. *Walker*, 276 N. Y. 15.[3] f. *Gilmore* v. *Ham*, 142 N. Y. 1; *Treadwell* v. *Clark*, 190 N. Y. 51.

In the absence of a definitive ruling by the highest court of the tate, we accept the decision of the Appellate Division and the rea-oning of the Court of Appeals upon which it rests as persuasive hat the three-year statute does not aply to suits like the present here the remedy is exclusively equitable. See *Wichita Royalty o.* v. *City Bank*, 306 U. S. 103, 107.

We take it that in the absence of a controlling act of Congress ederal courts of equity, in enforcing rights arising under statutes

[3] In Hanover Fire Insurance Co. v. Morse Dry Dock & Repair Co., 270 N. Y. 3, the Court of Appeals declared (pp. 89, 90):

"In an action in equity the ten-year limitation prescribed by section 53 of he Civil Practice Act is applicable unless, in a particular action, a party has choice of two remedies, one at law, the other in equity, both complete and dequate, and he selects the action in equity. In that event the party whose ause of action would be barred under the six-year statute, if he should elect o proceed at law, may not enlarge this time by electing to proceed in equity. uch is the rule where the remedies are concurrent. (Bundle v. Allison, 34 . Y. 180; Keys v. Leopold, 241 N. Y. 189; Clarke v. Boorman's Executors, 8 U. S. 493.)

"The exception is not applicable in cases of concurrent jurisdiction, how-ver, if a party's remedy at law is inadequate and imperfect and he is re-uired to go into equity to procure complete and adequate relief. (Bundle v. llison, *supra*; Mann v. Fairchild, 14 Barb. 548.)

"If relief may be had at law in an action for damages and in equity for escission of a contract on the ground of fraud with a reconveyance of land nd an accounting for profits, the action in equity is subject to the ten-year mitation though the action for damages is barred under the six-year statute. Schenck v. State Line Telephone Co., 238 N. Y. 308.)"

In Potter v. Walker, 276 N. Y. 15, the court said (pp. 25, 26):

"In respect to those causes of action by which is sought to recover profits ceived by directors by reason of wrongful acts, an action at law would not fford adequate relief. To the extent that an accounting is necessary, the ght and the remedy must necessarily be of an equitable nature. The Ap-llate Division is, therefore, clearly right in applying the ten-year Statute of

of the United States, will without reference to the Rules of Decision Act, adopt and apply local statutes of limitations which are applied to like causes of action by the state courts. Cf. *Mason* v. *United States*, 260 U. S. 545; *Jackson County* v. *United States*, No. 14, this term. In thus giving effect to state statutes of limitations as a substitute or supplement for the equitable doctrine of laches, it must appear with reasonable certainty that there is a state statute applicable to like causes of action. As that does not appear here with respect to the three-year statute, the court below rightly declined to give effect to that statute and as it found that the cause of action was not barred by laches, it rightly gave judgment for respondents.

Petitioners argue that under New York law, laches is not a defense to actions like the present and that in the light of our decisions in *Erie Railroad Co.* v. *Tompkins*, *supra*, *Ruhlin* v. *New York Life Insurance Co.*, 304 U. S. 202, federal courts in the exercise of the equity jurisdiction conferred upon them by § 24 of the Judicial Code, 28 U. S. C. §41, are no longer free to apply a different rule. But in this case laches has not been held to be a defense and the Court has not declined to give effect to a state statute shown to be applicable. In the circumstances we have no occasion to consider the extent to which federal courts, in the exercise of the authority conferred upon them by Congress to administer equitable remedies, are bound to follow state statutes and decisions affecting those remedies.

Affirmed.

Mr. Justice ROBERTS is of opinion that the judgment should be reversed for the reasons stated in the dissenting opinion of Clark, J., in the Circuit Court of Appeals.

Mr. Justice MURPHY took no part in the consideration or decision of this case.

Limitations as to such causes of action. (Civ. Prac. Act, § 53; Hanover Fire Ins. Co. v. Morse Dry Dock & Repair Co., 270 N. Y. 86.)"

Wright v. Russell, 269 N. Y. 683, 245 A. D. 708, 155 Misc. 877, and Reisman v. Hall, 257 A. D. 892, cited by petitioner, do not qualify this doctrine. There although representative actions were brought, the Illinois constitution under which the liability arose had been interpreted as permitting actions at law, Golden v. Cervenka, 278 Ill. 409. Since the legal action would have been barred within three years, the court, as in McDonald v. Thompson, 184 U. S. 71, and consistently with Potter v. Walker, *supra*, applied the same period to the equitable action founded upon it.